

ORIGINAL

1 SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

2 -----X

ADMINISTRATION PROCEEDING
3 IN THE MATTER OF

FILE NO.
#074/2003

4
5 ANIELA WALKER a/k/a ANE LA WALKER,
a/k/a ANIELE WALKER,

6
Decedent.

7 -----X

8 Surrogate Court
140 Grand Street
9 White Plains, New York
October 31, 2003
10 9:30 a.m.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Continued examination before
trial of a NON-PARTY WITNESS, LOUIS ROH, M.D.,
held pursuant to Subpoena, at the above time
and place, before a Notary Public of the
State of New York.

SULLIVAN REPORTING
388 Tarrytown Road
White Plains, New York 10607
(914) 949-4545

1 A P P E A R A N C E S :

2 PISCIONERE & NEMAROW, P.C.
Attorneys for Petitioner
3 363 Boston Post Road
Rye, New York 10580
4 BY: ANTHONY PISCIONERE, ESQ.
5

6 GEORGE LAMBERT,
Public Administrator
SCHUMAN, SALL & GEIST, ESQS.
7 One North Lexington Avenue
White Plains, New York 10601
8 BY: IVAN LAWNER, ESQ.
9

10 RABIN, PANERO & HERRICK, ESQS.
Attorneys for Objectants
44 Church Street
11 White Plains, New York 10601
BY: MATTHEW D. SCHWARZ, ESQ.

12

13

14 ALSO PRESENT:

15

JAMES McCARTY, ESQ.

16

17

18

19

20

21

22

23

24

25

- Louis Roh, M.D. -

Page 400

1 the nose in the areas where you observed the
2 abrasions, would that be consistent?

3 A. No, it's not consistent.

4 Q. Why not?

5 A. That's my opinion.

6 Q. Didn't you testify a few minutes ago
7 that those injuries, those abrasions to the nose
8 were consistent with a fingernail scrapping the
9 nose?

10 A. That's what I said. It's not consistent
11 with pinching the nose.

12 Q. Doctor, I am asking you to assume for
13 purposes of our question. The question I am about
14 to ask you; when Mr. Spruill went to pinch the
15 decedent's nose that he also scratched her nose
16 with his fingernail, are the injuries you observed
17 consistent with him having scratched her, if he
18 did scratch her, when he pinched her nose?

19 A. If he scratched her five times in the
20 back of the nose, yes.

21 Q. Doctor, the records of testimony that
22 you say you keep, those are on index cards?

23 A. No.

24 Q. Didn't you testify, Doctor, that you
25 keep records of all the cases that you testify on?

- Louis Roh, M.D. -

Page 401

1 A. No, autopsies I do.

2 Q. Doctor, do you recall testifying in this
3 case in your deposition testimony that you keep
4 records of every case that you testify on and that
5 you have those records for more than five years of
6 your testimony?

7 A. I don't recall.

8 Q. Doctor, let's refer your attention to
9 your deposition --

10 A. If I did I am wrong. I don't keep it.

11 Q. You don't keep it, Doctor?

12 A. The testimony record, no.

13 Q. Let's go back to your deposition
14 transcript and see if that refreshes your
15 recollection, Doctor?

16 A. If I said I did it, that was wrong.

17 Q. Doctor, let me refresh your recollection
18 first.

19 MR. SCHWARZ: He didn't say his
20 recollection needed to be refreshed.

21 Q. Deposition transcript, October 20, 2003,
22 Page 51 -- starting at Page 50, Line 22:

23 "Question: Doctor, I am talking about
24 the cases that you testified on. Do you keep some
25 records regarding those cases?

- Louis Roh, M.D. -

Page 402

1 "Answer: Yes, I do."

2 Continuing on Page 51:

3 "Question: What type cases or what
4 cases do you keep those records on?

5 "Answer: I do make a little index card
6 for the case testifying, but it doesn't go back to
7 1970.

8 "Question: How far back does it go?

9 "Answer: I don't recall.

10 "Question: Does it go back more than
11 five years?

12 "Answer: Yes

13 "Question: Is that for each and every
14 case you testified on for the last five years or
15 more?

16 "Answer: Yes.

17 "Question: Whether you testified for
18 the prosecution or the defense?

19 "Answer: That's correct.

20 "Question: Does it include information
21 like the name of the case?

22 "Answer: Yes.

23 "Question: Name of the attorney?

24 "Answer: Yes, and the judge."

25 That's it. Do you recall giving

- Louis Roh, M.D. -

Page 403

1 those --

2 A. Sometimes I do, yes.

3 Q. So you do have index cards in the cases
4 you testified for?

5 A. Yes.

6 Q. Do you keep those in your office at the
7 medical examiner's office?

8 A. No.

9 Q. Where do you keep them?

10 A. I throw them out.

11 Q. Wait a second. We just asked you these
12 questions and answers if you had the records and
13 you said you did?

14 A. Some I throw out; some I keep.

15 Q. The ones you keep, where do you keep
16 them?

17 A. In my office.

18 Q. Up at the Medical Examiner's office?

19 A. That's correct.

20 Q. On index cards?

21 A. Index cards, yes.

22 Q. Doctor, I'm going to ask you at your
23 next deposition to produce those cards that you
24 kept on the cases that you testified to. I'm
25 going to ask you to preserve those from this day

- Louis Roh, M.D. -

Page 404

1 forward and not to throw out any other cases.

2 A. I don't have it.

3 Q. What do you mean you don't have it?

4 A. I don't have index cards. I only have
5 index cards of the autopsy.

6 Q. Your deposition transcript is very clear
7 when you testified in this case on October 20,
8 2003, that you kept index cards for each and every
9 case that you testified on for the last five years
10 or more, whether you testified for the
11 prosecution --

12 A. I said --

13 Q. Let me finish, Doctor -- whether you
14 testified for the prosecution or the defense and
15 that it included information of the name of the
16 case, name of the attorney and the judge. In
17 fact, you even added in "Yes, and the judge," in
18 your answer.

19 Is it your testimony today that you
20 don't maintain such cards?

21 A. Yeah, it's been thrown out.

22 Q. When?

23 A. After the testimony.

24 Q. It is your testimony, Doctor, that
25 between October 20, 2003 and today's date, which

- Louis Roh, M.D. -

Page 405

1 is October 31, 2003, you have thrown out all these
2 cards that you testified you kept?

3 A. Yes, I did.

4 Q. Doctor, do you understand the concept of
5 perjury?

6 A. Yes, I do.

7 Q. Where did you throw the cards out,
8 Doctor?

9 A. In the garbage.

10 Q. Which garbage; at the office or did you
11 take them home to throw them out?

12 A. No, in the office.

13 Q. Did you give them to anybody before you
14 threw them out?

15 A. No, I just put them in the garbage.

16 Q. How big were these cards; how much space
17 did they take up?

18 A. A regular garbage bin.

19 Q. How much space did the cards take up,
20 more than one file draw?

21 A. No, a few.

22 Q. How few?

23 A. I would say maybe 20, 30.

24 Q. Doctor, you testified that you testified
25 in over 300 cases, didn't you?

- Louis Roh, M.D. -

Page 406

1 A. No, I didn't say that I save all the
2 index cards.

3 Q. That's not my question. In this case
4 haven't you said in your deposition that you have
5 testified in over 300 cases?

6 A. My answer is, I do not have index cards,
7 not now.

8 Q. That's not my question, Doctor. Did you
9 give deposition testimony in this case that you
10 have testified in over 300 cases?

11 A. Yes, I did.

12 Q. How many cases are you telling us now
13 that you have maintained index cards for?

14 A. Maybe 20, 30.

15 Q. Is it your testimony that between
16 October 20 and October 31 of 2003 you destroyed
17 those 20 or 30 records of testimony?

18 A. Yes, I did.

19 Q. Can you tell us the reason you did that,
20 Doctor?

21 A. Because I didn't want to get subpoena.

22 Q. You thought that those records might be
23 subpoenaed by us in connection with this case?

24 A. That's correct.

25 Q. And as a result you willfully destroyed

- Louis Roh, M.D. -

Page 407

1 those records?

2 A. That's correct.

3 Q. When did you do it, Doctor, how long
4 after October 20?

5 A. I don't know the exact date.

6 Q. Did you do it yesterday?

7 A. I don't know exact date.

8 Q. Did you do it this week?

9 A. I don't recall exact date.

10 Q. Did you do it last week?

11 A. I don't recall.

12 Q. Did you do it within days of October 20?

13 A. I do not recall.

14 Q. Did you discuss the destruction of these
15 records with any person --

16 A. No.

17 Q. Let my finish the question. Did you
18 discuss the destruction of these records prior to
19 your destroying these records?

20 A. No.

21 Q. Did you shred these records in any way?

22 A. No.

23 Q. Did you just toss them in the garbage?

24 A. That's correct.

25 Q. And you knew that these records might be

- Louis Roh, M.D. -

Page 408

1 subpoenaed by me in connection with this case,
2 correct?

3 A. No.

4 Q. You didn't know that?

5 A. I didn't know that.

6 Q. I thought you just said you throw them
7 out because you were worried --

8 A. Well --

9 Q. Let me finish the question, Doctor.
10 I thought you said you destroyed these
11 records because you were worried they were going
12 to be subpoenaed by me in connection with this
13 case?

14 A. Well, that was one of the reasons.

15 Q. What are the other reasons?

16 A. I didn't want to keep any unnecessary
17 records, because you have been subpoenaing all
18 kinds of things. I realize that keeping all these
19 records creates more problems, so I decided to get
20 rid of it.

21 You subpoenaed everything. So I realize
22 that keeping all these unnecessary records creates
23 a problem.

24 Q. Let me ask you a question. Have you
25 ever been challenged in such a way in a case where

- Louis Roh, M.D. -

Page 409

1 all your records have been subpoenaed like this?

2 A. No.

3 Q. So when a challenge such as this comes
4 about, your response was to destroy the evidence;
5 is that correct?

6 A. That's correct.

7 Q. Doctor, did you keep any of the records
8 in your computer?

9 A. No.

10 Q. Did you keep any of the records at your
11 home?

12 A. No.

13 Q. Doctor, is this the first time that you
14 have been involved in a civil case where the
15 person taking your deposition was also charged
16 with murder?

17 A. I don't recall.

18 Q. Do you recall any other case such as
19 this, Doctor?

20 A. I do not recall.

21 Q. In any event, this is the first time
22 that all these records like this have been
23 subpoenaed, correct?

24 A. I don't recall, most likely.

25 Q. This is the first time you have come up

- Louis Roh, M.D. -

Page 410

1 against this; is that right?

2 A. That's correct.

3 Q. And your response to this was to destroy
4 the evidence?

5 MR. LAWNER: Objection as to form.

6 A. This are my records.

7 Q. You thought those records would be
8 subpoenaed as evidence, correct?

9 A. No, I didn't say that.

10 Q. You thought those records would be
11 subpoenaed?

12 A. I felt keeping all those records create
13 frivolous subpoena issues. So I decided to get
14 rid of it.

15 Q. You thought they had frivolous subpoena
16 issues associated with them?

17 A. As far as I am concerned subpoenaing my
18 index card is frivolous.

19 Q. So you decided to prevent the subpoena
20 of records that you thought might be frivolous, by
21 destroying them?

22 A. That's correct.

23 Q. Doctor, did you believe when you
24 destroyed those records you had anything to hide?

25 A. That's not a record.

- Louis Roh, M.D. -

Page 411

1 Q. Doctor, let's assume for purposes of my
2 question that the index cards we are talking about
3 are records?

4 A. That's my file.

5 Q. That's your file?

6 A. Yeah, I decided to get rid of it.

7 Q. When you destroyed your file, was it
8 because you thought you had something to hide?

9 A. No.

10 Q. You didn't think you had anything to
11 hide?

12 A. I decided to get rid of it so I don't
13 have to come here and discuss about this thing one
14 by one.

15 Q. So you were worried that we were going
16 to start to look into the other cases that you
17 gave testimony?

18 A. We are talking about three days
19 testimony. I didn't want to go through that.

20 Q. Were you worried that we were going to
21 uncover other cases that you had to testify on?

22 A. No.

23 Q. Were you worried that we might discover
24 certain testimony of yours that you had given in
25 other cases that it might be contradictory to the

- Louis Roh, M.D. -

Page 412

1 testimony --

2 A. No.

3 Q. Let me finish -- to the testimony you
4 have given in this case?

5 A. No.

6 MR. PISCIONERE: I think it's time to
7 take a few minute break.

8 (Recess taken.)

9 Q. I am going to instruct you, Doctor, that
10 you are not to destroy any evidence that in any
11 way you feel might be associated with your
12 testimony in this case?

13 A. Such as?

14 Q. Anything, Doctor. I am not limiting it
15 to anything in the world. Anything.

16 MR. McCARTY: You can't say that.

17 MR. PISCIONERE: He doesn't want to --

18 MR. SCHWARZ: You can't subpoena --
19 you issued a subpoena. He produced the
20 documents. You can't have an all
21 encompassing subpoena for every single
22 thing he has ever done in his entire life.

23 MR. PISCIONERE: Maybe what we should
24 do is get the law secretary in here and
25 have the Court issue some direction. I

- Louis Roh, M.D. -

Page 413

1 think you are right.

2 I will be right back. If you want to
3 come with me, I am going to get a law
4 secretary.

5 (Recess taken.)

6 MR. PISCIONERE: Mr. DiBella, before
7 you begin, if I may, towards the end before
8 we broke I gave you direction or attempted
9 to give a direction to Dr. Roh, which upon
10 reflection I believe is inappropriate and
11 poorly advised.

12 I want to, for the record, retract the
13 direction I gave to Dr. Roh, not to destroy
14 some things, because I don't believe I had
15 authority to do so. I believe we'll
16 request the court to give direction to
17 Dr. Roh.

18 MR. DiBELLA: Did anybody else want to
19 say anything?

20 My name is Robert DiBella. I am Judge
21 Scarpino's Principal Court Attorney here in
22 the Surrogates Court. The attorneys came
23 to my office for a conference with respect
24 to some direction to the witness, Dr. Roh,
25 regarding retention of his records and the

- Louis Roh, M.D. -

Page 414

1 direction not to destroy records, that
2 Mr. Piscionere feels may be relevant to
3 issues scheduled to be heard in an
4 evidentiary hearing before Judge Scarpino.

5 I had an opportunity to speak to Judge
6 Scarpino about this briefly and after
7 hearing the attorneys and speaking to the
8 Judge, it's the Court's feeling,
9 Doctor, that you should be careful in what
10 you choose to destroy at this juncture.

11 We don't obviously, as I told you last
12 time, I asked you to preserve everything in
13 your file. Apparently our definition of
14 what that might mean and your definition of
15 what that might mean, may not be the same.

16 Perhaps those words are susceptible to
17 different interpretations, but what is
18 important is that records, whatever form
19 they may be in, or whatever file or place
20 they are kept in, that may be relevant to
21 issues at our hearing, be preserved.

22 That is our broad objection active.
23 We are not looking to make this any more
24 difficult than we need to with regard to
25 your operations.

- Louis Roh, M.D. -

Page 415

1 We have a substantial obligation, the
2 Court does, to protect evidence in a trial
3 so hopefully the truth can be arrived at,
4 consistent with our laws and rules.

5 Again, I am reiterating our direction
6 to you that we want any documents relating,
7 in any manner, wherever they be and
8 whatever form they are kept in under your
9 custody or potential control, to be
10 preserved.

11 In addition, records that relate to
12 conclusions that you draw as a medical
13 examiner in different situations, should be
14 preserved also.

15 I can't tell you that you need to
16 preserve every scrap of paper that exists
17 that you ever touched.

18 THE WITNESS: You have to tell me,
19 that's true.

20 MR. DiBELLA: I am not making
21 something that broad. These things are not
22 static. If you know you are being asked at
23 the depositions -- you are being deposed on
24 many separate days now -- about information
25 or findings or testimony that you may have

- Louis Roh, M.D. -

Page 416

1 given in other cases, about conditions you
2 observed in this case and they are
3 different from those or consistent with
4 those, that could be relevant. It's
5 possible that could be relevant here.

6 If you said, I think there was an
7 example given by Mr. Piscionere that a
8 blunt instrument would not cause a
9 particular type of condition, but in this
10 case you feel that it did, there maybe good
11 and substantial reasons why they are
12 different and circumstances that may
13 explain any apparent inconsistencies from
14 one testimony to another.

15 But if the whole file or record has
16 been destroyed, then we can never arrive at
17 the information in the first instance, let
18 alone the explanation of it. This is our
19 problem.

20 I am not here sitting in on the
21 deposition where I have the ability to rule
22 on a question by question basis and know
23 where he is going and where he might be
24 going when you are being questioned.
25 That's impossible. I don't have the

- Louis Roh, M.D. -

Page 417

1 ability right now to do that.

2 So we are dependent on your
3 professional judgment in a lot of ways, but
4 I want you to know that the Court is
5 considered that any destruction of records
6 could be very problematic.

7 THE WITNESS: It's not a record. It's
8 my memo on a piece of paper.

9 MR. DiBELLA: A memo on a piece of
10 paper is a record.

11 THE WITNESS: This is something I had
12 let's say ten years ago. I may have jotted
13 it down on the index card so I can refresh
14 my memory to testify in court.

15 I usually throw them out. They have
16 nothing to do with this case and he is
17 asking, bring all those, my memo cards to
18 this deposition.

19 If he asked me about a particular,
20 this particular case, certainly I bring it
21 in. In fact, he asked me to bring the
22 index card on this case, so I brought it in
23 this morning.

24 But he is asking me to bring my memo
25 pad, jot down on the index card, cases

- Louis Roh, M.D. -

Page 418

1 stretching) back 20, 30 years. These are
2 my scraps of paper. That's not, of course,
3 on record. It has nothing to do with this
4 case.

5 You have to draw the line, which is
6 relevant, which is not relevant. In my
7 opinion those cases are not relevant.

8 MR. DiBELLA: It's Judge Scarpino's
9 opinion, it's the only important one with
10 regard to what is relevant in this case.
11 Do you understand that?

12 THE WITNESS: I understand that.

13 MR. DiBELLA: I am not challenging
14 your medical opinion and I assure you, you
15 will not going to be challenged to change
16 Judge Scarpino's legal opinion.

17 You have an attorney. You can seek
18 the advice of your attorney. If you are
19 directed by one of these guys, why you feel
20 there is an inappropriate reason for the
21 objection, you should seek the advice of
22 your counsel. It's a confidential
23 discussion with your counsel. And counsel
24 will advise you as to what to do.

25 There are procedures that your counsel

- Louis Roh, M.D. -

Page 419

1 can utilize to prevent Mr. Piscionere from
2 getting things that he demands. They can
3 move to quash subpoenas. They can move for
4 further direction from the Court for an
5 order, limiting, narrowing the discovery,
6 the request of information. These
7 procedures have worked well for the courts
8 for many hundreds of years in all kinds of
9 cases, but they have to utilized in the
10 right order.

11 You can't be the person who decides
12 what you will give and what you will not.
13 The fact that you don't normally or
14 sometimes don't keep these cards, is not
15 the point.

16 If you have saved them and they do
17 have relevant information, they do exist
18 and they do have relevant information, it
19 may be something that Mr. Piscionere is
20 entitled to, subject to your attorneys
21 bringing the proper objections.

22 These records can sometimes be viewed
23 with what we call incamera, where the court
24 alone looks at them before any disclosure
25 is had, to determine whether they are

- Louis Roh, M.D. -

Page 420

1 relevant and if we make a decision as to
2 relevance or there is a question, it can be
3 appealed. Other people can see what we
4 have done and determine whether we did the
5 right thing or the wrong thing. So all
6 these things occur in a civilized process.

7 Again, I am not going to chastise you
8 for doing something wrong. I don't feel
9 you have. The order that we gave before
10 was limited.

11 But records include all types of
12 information; computer discs, hard drives,
13 telephone records, tapes, anything that
14 records an event.

15 If you had index cards and wrote on
16 them to refresh your recollection at a
17 later time, it's a record. It may be a
18 personal record, it might be a business
19 records. It might be some other type of
20 record to qualify, but the broad term of
21 record will include all types of
22 communication and information.

23 I don't want to have to give you a
24 three-page definition on the laws that make
25 those up. I am just trying to suggest to

- Louis Roh, M.D. -

Page 421

1 you that you need to consult with your
2 attorney with regard to what Mr. Piscionere
3 asks you to bring and use their best
4 judgment in compliance.

5 My boss is not the kind of kind who
6 likes to punish people, but he insists some
7 people abide by the rules so that the
8 process is protected and we can do the best
9 job we can with the information that we
10 have. Okay?

11 THE WITNESS: Okay.

12 MR. DiBELLA: So please, with regard
13 to any further records that are contained,
14 please make every effort to preserve these
15 and be very careful not to destroy things
16 that may have some import and put us in a
17 worse position later. I would like to
18 avoid that issue.

19 Does anyone feel that more needs to be
20 done on this area?

21 MR. PISCIONERE: No.

22 MR. LAWNER: No.

23 MR. PISCIONERE: Thank you.

24 MR. DiBELLA: Okay. Have a good day.
25 Doctor, I heard you have to leave, have a